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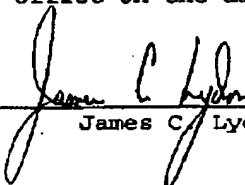
FROM: James C. Lydon

RE: Petition for Withdrawal of Finality of Official Action
U.S. Patent Appln. S.N. 09/936,077
By: Bruno COLIN et al.
Attv. Case No.: BONN-060

TOTAL PAGES: 5 including cover sheet.

DATE: June 2, 2005

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James C. Lydon

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PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the application of:

Bruno COLIN et al.

Serial Number: 09/936,077

Group Art Unit: 1743

Filing Date: December 3, 2001

Examiner: Ludlow, Jan M.

For: APPARATUS ENABLING LIQUID TRANSFER BY CAPILLARY ACTION THEREIN

PETITION FOR WITHDRAWAL OF FINALITY OF OFFICIAL ACTION

Commissioner for Patents

ATTN: 1700 Technology Center Director

P.O. Box 1450

Alexandria, VA 22313-1450

June 2, 2005

Sir:

Applicants petition for withdrawal of the finality of the Official Action mailed May 17, 2005 in this application. The facts supporting this Petition follow:

1. The previous Official Action rejected claims 9 and 13-16 as anticipated over U.S. Patent No. 5,286,454 to Nilsson et al.
2. In response, applicants filed an Amendment which rewrote independent claim 9.
3. The May 17, 2005 Official Action withdraws the previous anticipation rejection over Nilsson et al. However, the new Official Action includes a new anticipation rejection of claims 9 and 13-16 over newly-cited U.S. Patent No. 6,582,662 to Kellogg et al.

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4. No prior art had been cited to the Patent Office between the mailing of the previous Official Action and the May 17, 2005 Official Action.

5. The May 17, 2005 Official Action was made final on the argument that the applicants' amendment "necessitated" the new anticipation rejection. See Paragraph No. 4 on page 3 of the May 17, 2005 Official Action.

ACTION REQUESTED

The Commissioner is urged to withdraw the finality of the second Official Action because it is premature.

ARGUMENT

I. The Patent Office Has Withdrawn Its Only Previous Rejection

The sole prior art rejection made in the previous Official Action has been withdrawn. The applicants are now confronted with a totally new anticipation rejection.

II. The Patent Office has Cited Hitherto Unknown Art

The May 17, 2005 Official Action includes an anticipation rejection over newly-cited U.S. Patent No. 6,582,662 to Kellogg et al. Importantly, the applicants did not cite this reference to the Patent Office after issuance of the previous Official Action. Instead, the Patent Office first cited Kellogg et al. to the applicants as part of its May 17, 2005 Official Action. It is

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unfair to the applicants to make this Official Action "final" where, as here, applicants have completely overcome the rejection contained in the previous Official Action and were unaware of the existence of an allegedly anticipatory reference cited for the first time by the Patent Office.

III. The Applicants' Amendment Did Not "Necessitate" the New Anticipation Rejection

Claim 9 is the sole independent claim in this application. The previous Amendment required each of the two shallow grooves to be adjacent to the deep groove "along the entire length of said deep groove". Accordingly, claim 9 was narrowed by the previous Amendment.

The constriction of claim 9 could not have necessitated the anticipation rejection over newly-cited Kellogg et al. because, assuming arguendo, the anticipation rejection is valid over the present scope of claim 9, it would also have been valid over the broader scope of claim 9 prior to the last amendment. In other words, the Patent Office could have cited Kellogg et al. against the previous, broader version of claim 9 in the previous Official Action. No amendment/constriction of claim 9 was "necessitated" before the Patent Office could apply Kellogg et al. against the claims.

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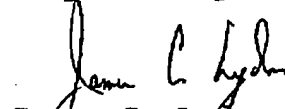
CONCLUSION

Reconsideration and withdrawal of the finality of the May 17, 2005 Official Action should be granted because this Official Action contains a new anticipation rejection based on a reference newly-cited by the Patent Office. The amendment of claim 9 did not "necessitate" the citation of Kellogg et al., which could have just as easily been cited against the broader, original scope of the claims. It is unfair to the applicants to confront them with a new, allegedly anticipatory reference, and simultaneously deny them the right to amend their application.

For all of the above reasons this Petition should be granted and the finality of the May 17, 2005 Official Action should be withdrawn.

It is not believed any fee is required for entry and consideration of this Petition. Nevertheless, the Commissioner is requested to charge any such required fee to our Deposit Account No. 50-1258.

Respectfully submitted,


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